

**Editor's note: Erratum dated Oct. 9, 1980 -- See 49 IBLA 397A below.**

LLOYD CHEMICAL SALES, INC.

IBLA 80-94

Decided September 5, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing a protest against issuance of simultaneous oil and gas lease W 69088.

Set aside and remanded.

1. Applications and Entries: Generally-- Oil and Gas Leases:  
Applications: Drawings--Oil and Gas Leases: Applications: sole Party  
in Interest

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Services Company, a leasing service, and issuance of the lease, shall be suspended pending appropriate action by BLM to determine whether there has been a violation of the regulations requiring disclosure of interests in a lease, when an offer is filed, and prohibiting against the multiple filings of lease offers in a simultaneous filing, arising from the RSC's client referral program whereby client A, for whom RSC files offers, can share in the proceeds of RSC's commission on a sale of client B's oil and gas lease negotiated by RSC if client B was referred to RSC by client A.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant; William R. Hamm, Esq., Quarles & Brady, Milwaukee, Wisconsin, for Resource Service Company and Donald D. Kluck.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

By a decision dated October 10, 1979, the Wyoming State Office, Bureau of Land Management (BLM), dismissed a protest by Lloyd Chemical Sales, Inc., the Number 2 drawee, to issuance of a simultaneous noncompetitive oil and gas lease W 69088 to the successful drawee,

Donald D. Kluck. Upon receiving appellant's protest, BLM requested and received a copy of the successful drawee's service agreement with Resource Service Company (RSC). BLM found this agreement to be in order and determined that neither the use of the leasing service address, nor the agreement gave RSC an interest in the lease.

On appeal to the Board appellant asserts primarily that the successful offeror's use of RSC gave RSC an interest in the lease in violation of 43 CFR 3102.7 and 43 CFR 3112.5 2. Appellant claims that this interest arose from use of a filing service address on the drawing entry card (DEC), from the agreement between RSC, and from the successful offeror and the leasing service's pattern of operation.

With the information available to it at the time of making its decision, the BLM decision was proper. The basic agreement between RSC and its client which was reviewed by BLM has been held not to create an interest in the filing service company because its client has the option to avail itself, as it chooses, of the company's offer to sell the lease for him at a commission. Erving J. Powers, 45 IBLA 186 (1980); Geosearch, Inc., 40 IBLA 267 (1979); Geosearch, Inc., 39 IBLA 49 (1979). Likewise, mere use of the filing service company's address on a DEC does not disqualify the offer, nor can a filing service company be inferred to have an interest in the lease from use of its address where the offer is filed under regulations which do not require a different address. Id. In Ervin J. Powers, supra, a majority of the Board answered another contention raised by appellant on appeal here, namely, an assertion that there was a violation of the regulations because Fred L. Engle, President of RSC, and his wife, filed offers competing with Kluck. 1/ In Powers the majority ruled that Engle's competition with its clients did not constitute a violation of the regulations which should be charged against the client whose offer had drawn first priority. The majority implied that there might be a violation if Engle had won.

[1] The above-cited Board decisions would be dispositive of this appeal if it were not for an additional arrangement between the leasing service company and its clients which is considered for the first time in this appeal. This concerns a referral program whereby RSC agrees to pay a client, A, up to \$2,000 per sale if another client, B, referred to RSC by client A, wins in the drawing, and uses RSC's sales agency agreement under which RSC negotiates sales with oil companies or other buyers with a commission to RSC. 2/ Appellant contends that

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1/ Judge Thompson dissented in Powers on the issue of the competing offers filed by Engle with this clients.

2/ The terms of RSC's sales agency option provides:

'When I win a drawing, R.S.C. provides, at my option, the service to sell the rights I have won. This agency contract for sale is

this referral arrangement constitutes a violation of 43 CFR 3102.7 because the party making the referral would have an undisclosed interest in the offer if a client had referred Kluck to RSC. Appellees, RSC and Kluck, contend there was no violation of the regulations by this referral program here. In support, they submit an affidavit by Engle with copies of its advertising brochure on the referral program, its form 711 referral card, and form letters sent to the person making the referral confirming the terms of the referral agreement and advising the person making the referral in the event the person referred wins a drawing. 3/ Engle also attests that based on his review of RSC files and his personal recollection, Kluck was not referred to RSC by anyone. There is no statement by Kluck nor any information on whether

available only after the drawing is completed. Any final negotiated price is subject to my approval. If I utilize R.S.C.'s agency contract for sale and they or I obtain a buyer during the 5-year term of the contract, I understand the service fee to R.S.C. is as follows:

OUTRIGHT SALE OF OIL & GAS RIGHTS

\$1 to \$200,000.00 ..... Service fee to R.S.C. 16%

Over \$200,000.00 ..... Service fee to R.S.C. 12%

IN EVENT OF ROYALTY PAYMENTS

\$1 to \$200,000.00 Annually .. Service fee to R.S.C. 16%

Over \$200,000.00 Annually ... Service fee to R.S.C. 12%

'If I do not receive at least \$10,000 gross in aggregate from a sale negotiated by R.S.C., they will process up to 300 additional applications which I may choose to make free of their service charge.'

3/ A portion of the letter from Engle to the client who makes a referral, states:

'In accordance with our previous notice to you, an extra copy of which is enclosed, we hereby confirm that if the above named client is successful in winning the oil and gas lease rights on a filing processed through Resource Service Company at any time in the future, we will pay you up to \$2,000 based on 2% of the first \$100,000 obtained as the cash bonus consideration from the sale of the oil and gas lease rights. Any such payment to you will, of course, be contingent upon our receipt of the commission entitled to us for negotiating the sale of the respective winner's lease rights. Such receipt of funds by us is, accordingly, contingent upon the winner referred by you exercising his option to enter into a Sales Agency Agreement with us after the drawing on his winning parcel takes place. Also, this agreement does not entitle you to any royalty payments from oil or gas production obtained from the winner's lease at anytime.

'Since you will be entitled to this payment, in accordance with the terms and conditions described above and included in the enclosed form, any time in the future if your referral wins, it is not necessary for you to submit a new referral card each time the above party renews his plan or subscribes to a different plan with us.'

Kluck referred to RSC any person who also participated in this simultaneous filing. 4/

While it is true, as appellees assert, that an RSC client who wins at a drawing, is free to negotiate sales with others and need not avail itself of RSC's sales agency agreement, the referral arrangement raises possibilities for violations of the regulations which would not be present in the absence of such an arrangement. For example, client A, the person making the referrals to RSC could very well have undisclosed agreements or understandings with the persons it refers to RSC, clients B, C, et al., that they will use RSC's agency sales service. The referral client A would have an interest in up to \$2,000 of the proceeds from each lease sale based upon his agreement with RSC and its agreement with the referred person. As defined in 43 CFR 3100.0 5(b), an 'interest' in the lease includes, but is not limited to

record title interest, overriding royalty interests, working interests, operating rights or options, or any agreements covering such 'interests.' Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an 'interest' in such lease.

If this interest is not disclosed on the DEC there would be a violation of 43 CFR 3102.7, requiring the disclosure of persons who have an interest in the offer or lease if issued. The commission or referral fee which client A would receive if its referred person, B, wins at a drawing, falls within the meaning of 'interest' as defined in the regulation, as it would constitute a 'claim or any prospective or future claim to an advantage or benefit from a lease.' The fact that this claim would be asserted against RSC makes no difference since it is based upon RSC's agreement with the other client, B, as well as the agreement between the two clients, A and B, and the benefit is derived from a share of the lease sale proceeds.

Furthermore, the possibility of undisclosed agreements or understandings between clients and prospective clients of RSC might create a situation where offers are filed in their behalf by RSC at one

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4/ Counsel for appellant has moved that the documents submitted in behalf of Kluck be disregarded because he was not served with copies of the documents. Counsel for appellee has responded. The disposition of this appeal effectually moots this matter and the motion is denied for this reason.

drawing. Thus, a client or clients might have interests in many offers submitted at a drawing of persons referred to RSC by them. RSC may also be deemed a third party beneficiary to such agreements since it would reap the benefit of the clients' understandings that only RSC would negotiate the sale of a lease and receive its commission. It appears there may very well be violations of the regulation prohibiting multiple filings, 43 CFR 3112.5 2, which provides in part:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1 6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. Should any such offer be given a priority as a result of such a drawing, it will be similarly rejected.

The Secretary of the Interior, by his temporary suspension of onshore oil and gas leasing for an investigation into fraud and abuse of the regulations, has made it very clear that this Department will not countenance schemes or arrangements by leasing services or others which might constitute a fraud or abuse of the regulations. The Secretary, as the guardian of the public lands and resources, must assure their disposal is made in accordance with the law and regulations. And, specifically, with reference to the simultaneous leasing process, we have said: '[T]his Board has a concomitant obligation to preserve the integrity of the process.' Lee S. Bielski, 39 IBLA 211, 86 I.D. 80, 89 (1979).

The facts are not as clear here as in Bielski to show fraud and a violation of the regulations. However, there have been additional facts shown to those considered in the Geosearch cases cited, supra. This is the first time the client referral program of the leasing service company has been brought to the attention of this Board. In the circumstances, we believe BLM in the first instance should consider the issues raised concerning the referral program and take appropriate action to determine if there has been a violation of the regulations prohibiting multiple filings and requiring disclosure of interests in

the lease on the offer forms. It would be important to know if and to what extent RSC clients who made referrals participated in the filing in which the persons referred to RSC also participated, and whether the clients have any agreements, understandings, or arrangements with other persons participating in these drawings using RSC's services.

Actions on Kluck's offer and appellant's protest should be suspended while BLM considers the matter and takes appropriate action. Thereafter, BLM shall issue a further decision with the right of appeal to this Board by any party adversely affected thereby.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for appropriate action consistent with this decision.

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Joan B. Thompson  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

## ADMINISTRATIVE JUDGE FISHMAN DISSENTING:

I would affirm the decision below, rather, than send BLM on a hunting expedition.

The majority indulges in pure speculation that a violation of the leasing regulations may have occurred. I quote from the majority opinion:

While it is true, as appellees assert that an RSC client who wins at a drawing, is free to negotiate sales with others and need not avail itself of RSC's sales agency agreement, the referral arrangement raises possibilities for violations of the regulations which would not be present in the absence of such an arrangement. For example, client A, the person making the referrals to RSC could very well have undisclosed agreements or understandings with the persons it refers to RSC, clients B, C, et al., that they will use RSC's agency sales service. The referral client A would have an interest in up to \$2,000 of the proceeds from each lease based sale upon his agreement with RSC and its agreement with the referred person.

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\* \* \* If this interest is not disclosed on the DEC there would be a violation of 43 CFR 3102.7, requiring the disclosure of persons who have an interest in the offer or lease if issued. The commission or referral fee which client A would receive if its referred person, B, wins at a drawing falls within the meaning of 'interest' as defined in the regulation, as it would constitute a 'claim or any prospective or future claim to an advantage or benefit from a lease.' The fact that this claim would be asserted against RSC makes no difference since it is based upon RSC's agreement with the other client, B, as well as the agreement between the two clients, A and B, and the benefit is derived from a share of the lease sale proceeds.

Furthermore, the possibility of undisclosed agreements or understandings between clients and prospective clients of RSC might create a situation where offers are filed in their behalf by RSC at one drawing. Thus, a client or clients might have interests in many offers submitted at a drawing of persons referred to RSC by them. RSC may also be deemed a third party beneficiary to such agreements since it would reap the benefit of the clients' understandings that only RSC would negotiate the sale of a lease and receive its commission. It appears there may very well be violations of

the regulation prohibiting multiple filings, 43 CFR 3112.5 2 \* \* \*. [Emphasis supplied.]

The majority indulges in hypotheses compounded by suppositions to suggest violations of regulations.

The Board has held recently that protests against the issuance of oil and gas leases are properly dismissed where the protestant fails to show with competent evidence that there have been violations of the leasing regulations, that the successful drawees should have been disqualified, or that the leases should have been cancelled. Geosearch, Inc., 48 IBLA 20, 48 IBLA 76 (1980). Similarly, allegations against a purported bona fide purchaser of an oil and gas lease must be supported by evidence to trigger further inquiry looking to the cancellation of the lease. Geosearch, Inc., 48 IBLA 51 (1980).

The Board has held that where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an 'interest' in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying. Geosearch, Inc., 40 IBLA 401 (1979); Geosearch, Inc., 40 IBLA 267 (1979); Geosearch, Inc., 39 IBLA 49 (1979).

The ratio decidendi for finding an arrangement with a leasing service to be permissible vel non always has been whether a party had an enforceable right to any of the proceeds of the lease which might issue. In the case at bar, the majority has superimposed supposition upon supposition to find a basis for further inquiry. I see no rational need therefor.

Moreover, the revision of 43 CFR Part 3100, 45 FR 35156 35166 (May 23, 1980), should help in resolving some of the former problems in the simultaneous oil and gas filing procedures, e.g., 43 CFR 3112.2 1(d).

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Frederick Fishman  
Administrative Judge



October 9, 1980

IBLA 80-94 : W 69088  
49 IBLA 392 :  
: Oil & Gas lease  
LLOYD CHEMICAL SALES, INC. : Erratum

#### ERRATUM

49 IBLA 392 at 399 second full paragraph, sixth line should read in  
part "Inc., 48 IBLA 20, 48 IBLA 76 (1980) in lieu of "Inc., 48 IBLA 20, 43  
IBLA 76 (1980)."

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Frederick Fishman  
Administrative Judge

49 IBLA 397A

